

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36186/36187/36188

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| STATE OF IDAHO, |) | 2009 Unpublished Opinion No. 709 |
| |) | |
| Plaintiff-Respondent, |) | Filed: December 2, 2009 |
| |) | |
| v. |) | Stephen W. Kenyon, Clerk |
| |) | |
| WALTER ELLISON, |) | THIS IS AN UNPUBLISHED |
| |) | OPINION AND SHALL NOT |
| Defendant-Appellant. |) | BE CITED AS AUTHORITY |
| |) | |

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. G. Richard Bevan, District Judge.

Order revoking probation and requiring execution of unified ten-year sentence with two-year determinate term for delivery of a controlled substance, affirmed; judgment of conviction and consecutive unified sentence of five years with one year determinate for possession of a controlled substance, affirmed; judgment of conviction and unified sentence of five years with six months determinate, consecutive to the delivery sentence and concurrent with the possession sentence, affirmed.

Greg S. Silvey, Kuna, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge; GRATTON, Judge;
and MELANSON, Judge

PER CURIAM

Walter Ellison pled guilty to delivery of a controlled substance (Docket No. 36186). Idaho Code § 37-2732(c)(1). The district court imposed a unified ten-year sentence with two years determinate, suspended the sentence and placed Ellison on supervised probation for five years. Approximately two years later, Ellison pled guilty to possession of a controlled substance (Docket No. 36187), Idaho Code § 37-2732(c)(1), and unlawful possession of a firearm (Docket No. 36188), Idaho Code § 18-3316. The district court consequently revoked probation in

Docket No. 36186 and ordered execution of the original sentence. In Docket No. 36187 the district court imposed a unified sentence of five years with one year determinate to run consecutive with the sentence in Docket No. 36186. In Docket No. 36188 the district court imposed a unified sentence of five years with the first six months determinate to run consecutive to the sentence in Docket No. 36186 and concurrent with the sentence in Docket No. 36187. Ellison appeals, contending that the district court abused its discretion by revoking his probation and ordering execution of the sentence in Docket No. 36186 and by imposing consecutive sentences in Docket Nos. 36187 and 36188.¹

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

Sentencing is also a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-

¹ In his brief, Ellison asserts that he will not begin to serve the determinate term of the latter two sentences until after the entire ten-year term of the first sentence elapses. This is incorrect. When consecutive sentences have been imposed for multiple offenses, with a fixed and an indeterminate term in each sentence, the fixed terms are served sequentially and the indeterminate terms then follow sequentially, during which indeterminate terms the prisoner may be released on parole. *Doan v. State*, 132 Idaho 796, 800, 979 P.2d 1154, 1158 (1999). Therefore, Ellison will serve the two-year determinate term, then the one-year determinate term, followed by the indeterminate terms.

73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

When we review a sentence that is ordered into execution following a period of probation, we do not base our review solely upon the facts existing when the sentence was imposed. *State v. Whittle*, 145 Idaho 49, 52, 175 P.3d 211, 214 (Ct. App. 2007). Rather we also examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *Id.*

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion in revoking probation, in ordering execution of Ellison's original sentence without modification or in sentencing in the other two cases. Therefore, the order revoking probation and directing execution of Ellison's previously suspended sentence for delivery of a controlled substance and the judgments of conviction and sentences for possession of a controlled substance and unlawful possession of a firearm are affirmed.